

DEADLINE 460

21/2/2012

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL FORUM, SAS
NAGAR (MOHALI) .

Consumer Complaint No.484 of 2011

Date of institution: 23.11.2011

Date of Decision: 10.02.2012

Balraj Kalra, resident of B-X/724, Lajpat Nagar,
Kotkapura.



..... Complainant

Versus

1. APIO, Director Rural Development & Panchayat, Punjab,
Vikas Bhawan, Sector 62, SAS Nagar, Mohali.
2. APIO, Block Development & Panchayat Officer, Moga-I.
3. APIO, Block Development & Panchayat Officer,
Baghapurana.
4. APIO, Block Development & Panchayat Officer,
Faridkot.
5. APIO, Block Development & Panchayat Officer,
Kotkapura.
6. APIO, Block Development & Panchayat Officer, Muktsar.

..... Opposite Parties

**Complaint under Section 12 of the
Consumer Protection Act, 1986.**

CORAM:

Shri B.S.Mehandiratta, President.
Dr. S.S.Dhaliwal, Member.

Present: Complainant in person.

Ms.Harbans Kaur, Superintendent for OP No.3.

Mr.Mohan Singh, Social Education & Panchayat
Officer as authorized representative for OP
No.4.

Mr.Gurnam Singh, Accounts Clerk as authorized
representative for OP No.5.

Mr. Sarbjit Singh Brar, OP No.6, in person.

OP Nos.1 & 2 ex-parte.

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ORDER

The case of the complainant is that his earlier complaint bearing No.303 was decided by this Forum on 13.09.2011. During the pendency of that complaint, he sought some information under the Right to Information (RTI) Act from the Opposite Party (for short 'the OP') No.1 vide his application Ex. C-1. OP No.1 vide its letter dated 16.09.2011 Ex.C-2, addressed to all the BD&POs in Punjab directed them to provide the demanded information to the complainant. However, they failed to provide the requisite information. He then wrote letter dated 26.09.2011, Ex.C-3 to all the BD&POs enclosing therewith letter dated 16.09.2011 Ex.C-2 of OP No.1 for supplying him the required information. In response, he received incomplete information from EO Panchayat Samiti Moga-2 instead of OP No.2 vide letter dated 05.10.2011 Ex.C-7. On his request dated 08.10.2011, Ex.C-8, EO Panchayat Samiti Moga-2 supplied him complete information vide his letter dated 19.10.2011 (wrongly mentioned on the letter as 19.07.2011) Ex.C-9.

OP No.5 also supplied him incomplete information vide his letter dated 24.10.2011 Ex.C-10 and in Para No.4 of this letter, it was mentioned that the relevant information was available with the office of OP No.1 whereas OP No.1 had already directed vide its letter


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dated 16.09.2011 Ex.C-2 to supply the information to the complainant. EO Panchayat Samiti Moga-2 has supplied the requisite information to the complainant vide its letter dated 19.10.2011 Ex.C-9.

OP No.3 straightway refused to supply the information to the complainant vide his letter dated 12.10.2011 Ex.C-11 on the ground that the application of the complainant was in English. The complainant then submitted his application in Gurmukhi dated 27.10.2011 Ex.C-12 but even then the requisite information has not been supplied to him.

The information received from OP No.4 was received vide his letter dated 03.11.2011 Ex.C-13 after period of 30 days as stipulated under the provisions of the RTI Act and it was ditto copy of the information earlier supplied to him by OP No.5. OP Nos.2 & 6 have not given any reply to his letter and not supplied the requisite information. The information requested by the complainant relates to his wife who has retired as a Craft Teacher. Non supply of the information has caused him mental tension and physical torture.

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With the aforesaid allegations, the complainant has sought direction to the OPs to pay him Rs.60,000/- as



compensation for mental torture and Rs.10,000/- towards litigation expenses.

2. OP Nos.1 & 2 were absent despite service and were proceeded against exparte.

3. OP No.3 in its written statement has stated that this Forum does not have jurisdiction to try the complaint. It has been un-necessarily impleaded in the complaint. It has denied the averments of the complaint and requested for dismissal of the complaint against it.



4. In its written statement, OP No.4 has stated that it did not receive any application from the complainant. On receipt of letter dated 16.09.2011 from OP No.1, it supplied the requisite information to OP No.1. It has denied the jurisdiction of this Forum to entertain the complaint and sought its dismissal.

5. OP No.5 in its written statement has pleaded that the complaint is not maintainable against it as the complainant has failed to avail the relief from proper channel. The information relating to and available with it has already been supplied to the complainant vide letter dated 24.10.2011. The information sought by the complainant in Para No.4 did not relate to it. However, it

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wrote letter to OP No.1 for issuance of guidelines regarding the information sought by the complainant in Para No.4 vide its letter dated 28.10.2011 but did not receive any guidelines. Denying any deficiency of service on its part, it has sought dismissal of the complaint.

6. Instead of filing any written statement, OP No.6 on 27.12.2011 produced its letter No.3253-55 dated 20.12.2011 addressed to the complainant vide which it supplied him the requisite information.

7. Parties have led evidence.

8. The complainant has tendered in evidence his affidavit Ex.CW-1/1; copies of his application to OP No.1 dated 01.09.2011 Ex.C-1 & C-6; letters of OP No.1 dated 16.09.2011 to the Executive Officers of all the Panchayat Samities in Punjab Exs.C-2 and C-5; his applications dated 26.09.2011 to the Executive Officer of Panchayat Samiti Kotkapura Ex.C-3 & C-4; Letter of EO Panchayat Samiti Moga dated 05.10.2011 Ex.C-7; his application to EO Panchayat Samiti Moga-2 dated 08.10.2011 Ex.C-8; letter of EO Panchayat Samiti Moga-2 to the complainant dated 19.07.2011 Ex.C-9; letter of EO Panchayat Samiti Kotkapura to the complainant dated 24.10.2011 Ex.C-10; letter dated 12.10.2011 of OP No.3 to the complainant Ex.C-11; his



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application to OP No.3 dated 27.10.2011 Ex.C-12 & letter of EO Panchayat Samiti Faridkot Ex.C-13.

9. Evidence of OP No.3 consists of affidavit of Jaswant Singh BDPO Ex.RW-3/1. Evidence of OP No.4 consists of affidavit of Avtar Singh BDPO Ex.RW-4/1. Evidence of OP No.5 consists of affidavit of Shavinder Singh Brar BDPO Ex.RW-5/1. Evidence of OP No.6 consists of affidavit of Sarabjit Singh Brar, BDPO Ex.RW-6/1.

10. Written arguments have been filed by the complainant only. The complainant and the persons present on behalf of OP Nos.3 to 6 have been heard.



11. The first point for consideration is whether the complainant is a '**consumer**' and the OPs are '**service providers**' within the meaning of Section 2(1) (d) of the Consumer Protection Act, 1986 (for short 'the CP Act'). In this regard, it has been contended on behalf of the OPs that the fee paid by an applicant for seeking information under the provisions of the RTI Act is not a '**consideration**' nor is supply of information under the RTI Act '**service**' within the ambit of the CP Act. The PIOs and the APIOs designated under the RTI Act are discharging statutory functions and are not rendering any '**service**' within the purview of the CP Act. The RTI Act provides

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detailed mechanism for remedy where the PIO/APIO fails to provide the demanded information by way of appeal to the State Public Information Officer (SPIO) which the complainant could avail but has not availed.

12. On the other hand, the complainant has argued that the RTI Act does not provide to an applicant remedy as a '**consumer**' which he can avail of only under the CP Act. He has further argued that an applicant under the RTI Act seeking information under the relevant Sections is a '**consumer**' and the Information Officer is a '**service provider**' and so is the Public Authority which has designated him so and any acts of commission and omission on the part of the Information Officer amount to '**deficiency of service**' within the mischief of the CP Act. In support of his contention, he has cited two decisions of the Hon'ble National Commission. The first is *Smt. Usha Rani Aggarwal Vs. Nagar Palika Parishad, Haldwani, District Nainital* etc. arising out of appeal Nos.931 and 932 of 2003 decided by the Hon'ble National Commission on 06.09.2006. It was specifically held by the Hon'ble National Commission in this decision that applicants under the RTI Act seeking information were '**consumers**' because for getting copies of relevant documents (assessment order in that case), they were required to deposit requisite fee which was consideration for the service rendered. Non




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supply of a copy amounted to 'deficiency of service' on the part of the municipal committee. In the second decision cited as *Dr. S.P. Thirumala Rao Vs. Municipal Commissioner, Mysore City Municipal Corporation*, arising out of Revision Petition No.1975 of 2005 decided by the Hon'ble National Commission on 28.05.2009, the learned District Forum held that Section 3 of the CP Act provides an additional remedy to a 'consumer' and, therefore, any provision in the RTI Act barring jurisdiction of the Court (as under Section 23 of the RTI Act, 2005) did not bar the jurisdiction of the Consumer Fora to entertain a complaint of 'deficiency of service' on the part of the information officer more so because the relevant Section barring the jurisdiction applied to the courts whereas Consumer Fora are not a courts. The District Forum also held **that failure of the Information Officer to furnish information in time prevented the complainant from approaching the appropriate appellate authority for redressal of his grievance** and, therefore, he was entitled to invoke jurisdiction of the District Consumer Forum. The appeal filed by the Information Officer was accepted by the Hon'ble State Commission by holding that once the complainant had availed the remedy against which appeal was provided, he could not maintain a complaint under the CP Act. In the revision petition filed against the order of the Hon'ble State Commission, the Hon'ble National



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Commission set aside the order of the Hon'ble State Commission and restored that of the learned District Consumer Forum with the following observations:

"The District Forum had dealt with the objections raised by the opposite party regarding bar of jurisdiction of Courts under Section 10 of the Act as also the overriding effect of the Act. The State Commission in the impugned order did not at all refer to the findings of the District Forum on the said issues but allowed the appeal only on the ground that once the complainant had already availed remedy under the said Act and appeal is provided therein, the complainant cannot maintain a complaint under the CP Act. We may at this stage point out that the findings of the District Forum with reference to Section 10 & 11 are supported by reasons which do not call for any interference. In fact, the view taken by the District Forum is in consonance with the rulings of this Commission in the case of Smt. Kalawati (supra) and Smt. Usha Rani Aggarwal (Supra). We entirely agree with the reasoning of District Forum on this aspect. Though the said Act provides for penalties under Section 9 of the said Act on the competent authority, yet, the Act does not provide for any remedy to the consumers who have sought information under the said Act for deficiency of service in the nature of compensation or damages for not furnishing the information sought to which they are entitled to get under the said Act. Section 3 of the CPA provides additional remedy in addition to the remedies provided under other Acts and it is not in derogation of any provisions of any law. The Consumer Fora has, therefore, **jurisdiction to entertain the complaint in respect of deficiency of service in the given facts especially when information sought was not furnished.** The competent authority was required to give information within 15 days of the application in terms of Section 5 of the said Act. **However, the said information was not furnished.** The complainant had approached the District Forum claiming compensation/damages for deficiency of service. Even though, further remedy may be available to the applicant in case information is not supplied in terms of Section 5 of the Act within




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15 days, yet there is no bar to approach the District Forum for deficiency of service. The remedy under the said Act would take care of disciplinary action and penalty against the competent authority in not furnishing the information but no remedy is provided under the said Act to the applicant seeking information therein **if information sought is not provided** resulting in deficiency of service on that count. The applicant had paid a fee of Rs.10/- for seeking the said information. The case of the applicant would fall within the scope and ambit of Section 2 (i) (o) CP Act, which provides that service, means service of any description which is made available to potential users, which include purveying of news or supplying of other information. **The complainant had availed of the services under the said Act for consideration by paying fee and had sought information under the said Act, which was not supplied to him, which amounts to deficiency of service.** The complainant is, thus, a consumer vis-à-vis information sought on payment under the said Act. In our view, therefore, the State Commission was wrong while holding that once the complainant had availed the remedy against which appeal was provided, he could not maintain a complaint under the CP Act."



13. In view of the aforesaid two rulings of the Hon'ble National Commission, there remains no doubt that the fee paid by an applicant under the provisions of RTI Act is 'consideration', the applicant is a 'consumer' and the Information Officer is 'service provider'. The action of furnishing of information in lieu of fee received is of rendering of service and the failure to supply the information as per provisions of the RTI Act is 'deficiency of service' within the mischief of provisions

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of the CP Act. Therefore, we hold that the complaint is maintainable before this Forum.

14. Vide his application dated 01.09.2011, Ex. C-1, the complainant sought the following information from OP No.1:-

1. Number of 'retired Panchayat Samiti employees in the State of Punjab.
2. Whether the increased D.A. installments are being paid to the Panchayat Samiti employees?
3. How many increased D.A. installments from July, 2009 to update have been paid to them?
4. In the last para you in your reply to the complaint of Balraj Kalra (CC No.303) before the DCF Mohali on 12.08.2011 have stated that "due to shortage of funds, DA is not paid to the wife of the complainant".

Then what is the source of funds by the help of which you are paying the increased DA installments from July, 2009 to update to your (Samiti) employees?

15. Instead of supplying this information to the complainant, OP No.1 addressed letter dated 16.09.2011 Ex.C-2 to all the Executive Officers of the Panchayat Samities in Punjab asking them to supply the requisite information and sent its copy to the complainant. The complainant says that actually letter Ex.C-2 was never dispatched by OP No.1 to any of the aforesaid Executive Officers. It was rather he who provided copies of letter Ex.C-2 to OP Nos.2 to 6 as also to the BD&PO, Ferozepur.

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16. The complainant did not receive any response to his application Ex.C-1 from OP No.2 (APIO of the office of BD&PO, Moga-1) at all. OP No.2 has been proceeded against exparte in this Forum as well. Non provision of the demanded information by OP No.2 amounts to deficiency of service on his part.

17. As regards OP no.3, the allegation of the complainant is that OP No.3 vide his letter dated 12.10.2011 (Ex.C-11) refused to supply the information on the ground that his application was in English and that application in Punjabi be submitted. He then submitted to OP No.3 fresh application dated 27.10.2011 Ex.C-12 but still the requisite information was not supplied to him. The stand taken by OP No.3 in Para No.3 of his written statement is that necessary information was (duly) supplied to the complainant. However, in his affidavit Ex.RW-3/1, Jaswant Singh, the incumbent of the office of OP No.3, has not at all stated that the requisite information was supplied to the complainant and has rather deposed that this Forum has got no jurisdiction to try and decide the complaint as the matter in dispute relates to service matter and also that he has been un-necessarily impleaded as a party in this complaint. That means that OP No.3 has taken false stand regarding provision of the requisite information to the complainant. Non supply of



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the requisite information by OP No.3 despite directions from its Head office i.e. OP No.1 amounts to deficiency of service on his part.

18. Allegation of the complainant against OP No.4 is that he received delayed information from him on 16.11.2011 beyond the period of 30 days provided under the RTI Act. However, he has enclosed letter No.3025 dated 03.11.2011 Ex.C-13 of OP No.4 vide which he was supplied information on the first three points of his application. As regards point No.4, OP No.4 informed him that this para related to OP No.1. There is no evidence to show when did OP No.4 actually receive the letter of OP No.1 dated 16.09.2011 Ex.C-2 or any copy of this letter from the complainant for necessary action and, therefore, in the absence of any cogent evidence, we are unable to attribute any deficiency on account of alleged delay to OP No.4.

19. The allegation of the complainant against OP No.5 is that he gave him incomplete information vide his letter dated 24.10.2011 Ex.C-10. He has alleged that OP No.5 did not give him information regarding Para No.4 of his application Ex.C-1 by stating that this para related to OP No.1. In our view, once OP No.5 replied that there were 22 employees with the Panchayat Samiti Kotkapura it was supposed to intimate the source of funds by which the



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increased DA was being paid to its employees since July, 2009. Non furnishing of this information amounts to deficiency of service on its part.

20. The allegation of the complainant against OP No.6 is that he has not at all supplied him the requisite information. OP No.6 has not filed any written statement. The present incumbent of OP No.6 Mr. Sarabjit Singh Brar has, however, today filed his affidavit Ex.RW-6/1. He has deposed that the complainant never applied to him for the information in question directly. Rather office of OP No.6 received letter Ex.C-2 dated 16.09.2011 from OP No.1 and on receipt of the same the requisite information was sent to the Head Office (OP No.1). OP No.6 thus states that he did not provide any information directly to the complainant. We find that OP No.6 has taken a false stand to save his skin. He has not placed on record the information sent by him to OP No.1 prior to the institution of this complaint, which was filed on 22.11.2011. However, on 27.12.2011 his Superintendent Ajit Singh produced in this Forum letter No.3253-55 dated 20.12.2011 addressed to the complainant and copies to OP No.1 and this Forum sending the requisite information. This letter was sent much beyond the stipulated period of 30 days during which the information was required to be sent to the complainant under the provisions of the RTI



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Act. Thus, OP No.6 is also found to be guilty of deficiency of service.

21. OP No.1 has chosen not to contest the complaint. It was the Information Officer and Nodal Agency to which the complainant had initially submitted his application Ex.C-1 dated 01.09.2011 under the RTI Act. Atleast in respect of the information sought by the complainant in Para No.4 of his application Ex.C-1, it should have given detailed and consolidated information to the complainant, after collecting it from all the Panchayat Samities in the State. It could have taken the stand that different Panchayat Samities in the State were paying DA installments to their employees from different sources, but never took this stand. It is the controlling department of all the Panchayat Samities in the State. In the present electronics age, a controlling department is in a very comfortable position to collect the requisite information from its subordinate offices in 24 hours through different means including fax and telephone. Its casual and careless approach in the matter clearly amounts to deficiency of service on its part.

22. The complainant is an old man of 73 years age. His single return trip to this office involves mileage of about 500 kms. from Kotkapura where he resides besides



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travelling expenses and wastage of time. It appears that the respective incumbents of OP Nos.1 to 3 & 5 & 6 and their officials are not bothering about the rights of citizens given to them under the provisions of the RTI Act and about their compliance. The attitude of OP No.1 is even more intriguing especially when it has not even cared to appear in this Forum and to contest the complaint.

23. The complaint is, therefore, allowed against OP Nos.1, 2, 3, 5 & 6. OP No.1 is directed to pay to the complainant compensation for mental agony and harassment to the tune of Rs. 10,000/- (Rupees ten thousand only). Each one of OP Nos. 2,3,5 & 6 is directed to pay to the complainant compensation for mental agony and harassment to the tune of Rs.5,000/- (Rupees five thousand only). The aforesaid OPs should also pay each to the complainant costs of litigation to the tune of Rs.2,000/-. Director Rural Development & Panchayats Punjab, Vikas Bhawan, Sector 62, SAS Nagar, Mohali is directed to conduct an enquiry and fix responsibility of the officers/officials responsible for supplying incomplete/late information and for not supplying the information at all and to recover the compensation awarded by this order from their salary, under intimation to this Forum within a period of two months from the date of receipt of a certified copy of this order. Payment of the compensation and costs awarded



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should be made to the complainant within a period of one month from the date of receipt of a certified copy of this order. Certified copies of this order be furnished to the parties forthwith free of cost and a copy of this order be also forwarded to the Director Rural Development & Panchayats Punjab, Vikas Bhawan, Sector 62, SAS Nagar, Mohali for information and compliance and thereafter the file be consigned to the record room.

Pronounced.
February 10, 2012



SD
(B.S. Mehandiratta)
President

Certified to be true copy

SD 15/2/12
Superintendent
Distt. Consumer Disputes Redressal Forum
S.A.S. Nagar (Mohali)
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2. Name of Applicant : Dr. S. Malhi
3. Date when the copy was made ready : 15/2/12
4. Date when the copy was delivered : 21/2/12
5. Whether free or against fees : free

SD
(Dr. S.S. Dhaliwal)
Member

SD 15/2/12
Superintendent
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